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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 STEVEN RINGELBERG,

Case No. 2:17-cv-01788-JAD-PAL

8 Plaintiff,

ORDER

9 v.

10 VANGUARD INTEGRITY  
PROFESSIONALS-NEVADA, INC., et al.

(Mot Prot Ord – ECF No. 57)  
(Counter Mot Prot Ord – ECF No. 63)

11 Defendants.

12 Before the court are plaintiff's Motion for Protective Order (ECF No. 57), and defendants'  
13 Opposition and Countermotion for Entry of Protective Order (ECF No. 63). The court held a  
14 hearing on a series of motions in this case on November 7, 2017, and took the current motions  
15 under advisement indicating that the court would review the parties' competing proposed forms of  
16 protective order and enter a protective order. The parties requested, and received, a referral to the  
17 court's ENE program. An ENE was conducted before The Honorable George W. Foley on  
18 December 20, 2017, but the parties were unable to reach a settlement, and this case was returned  
19 to the normal litigation track. *See* Minutes of Proceedings (ECF No. 79). This order resolves the  
20 parties' disputes about disputed terms of a protective order governing confidentiality.

21 The parties agree that a protective order governing confidentiality for documents disclosed  
22 in discovery should be entered. The parties met and conferred and exchanged draft proposed  
23 stipulated protective orders, and were able to agree on the majority of its terms. However, the  
24 parties reached an impasse with respect to the definition of "confidential information" for purposes  
25 of designating documents as confidential in discovery. The parties also disagree about whether  
26 *intentional* disclosure of attorney-client or qualified work-product documents in discovery  
27 operates as a waiver of privilege.  
28

1 With respect to the definition of “confidential information,” plaintiff proposes a definition  
2 that purportedly sets forth an objective description which allows the parties and, if necessary, the  
3 court, to determine whether a particular document is entitled to designation as confidential in the  
4 event of a dispute. Defendants propose a broader and less restrictive definition of confidential  
5 information and also want the ability to designate some documents “highly confidential--attorney  
6 client privileged information.” Defendants’ proposed definition contains a clause that documents  
7 may be designated as confidential by a producing party or non-party who reasonably and in good  
8 faith contends the information should be protected from disclosure pursuant to the protective order.  
9 Plaintiff opposes defendants’ definition arguing the open ended “reasonably and in good faith”  
10 standard is subjective rather than objective. During oral argument, counsel for plaintiff argued  
11 that plaintiff’s definition of confidential is consistent with defendants’ internal policies concerning  
12 confidentiality, and would prevent the defendants from over-designating documents as  
13 confidential.

14 The court will resolve the parties’ dispute by defining “confidential information” as  
15 information, regardless of how generated, stored, or maintained, or tangible things that qualify for  
16 protection under Fed. R. Civ. P. 26(c).

17 Plaintiff’s version of the proposed protective order provides that “the intentional  
18 production of privileged materials should constitute a waiver of the privilege.” Defendants’  
19 version of this section of the draft proposed protective order provides that intentional production  
20 of privileged information will not constitute a waiver of the privilege. Plaintiff argues that  
21 defendants’ proposal that production of privileged documents does not constitute a waiver is  
22 contrary to established law, the Federal Rules of Civil Procedure, and a term of the stipulated  
23 Discovery Plan and Scheduling Order (ECF No. 48) which the court entered. Additionally,  
24 plaintiff requests a 15-day claw back period after discovery of inadvertently produced documents.

25 Defendants respond that plaintiff’s proposed form of protective order fails to protect  
26 defendants against disclosure of privileged information that may be necessary for use at trial, and  
27 does not contain a sufficient “claw back” clause for inadvertent disclosure of attorney-client  
28 communications. Defendants object to a 15-day claw back period after discovery of an inadvertent

1 production of privileged materials and propose alternative language requiring claw back “as soon  
2 as practicable” following discovery of the inadvertent production.

3 Defendants maintain that there is good cause to enter a protective order permitting  
4 defendants “to assert documents necessary to pursue their available defenses and have the ability  
5 to claw back those that are inadvertently produced without losing their protected status.”  
6 Defendants also maintain that because plaintiff acted as in-house counsel for the defendants, and  
7 a substantial amount of relevant information involved in this case is privileged, and some of the  
8 privileged information supports defendants’ defenses, “it is essential that Defendants be permitted  
9 to present its defenses without putting any privileges in jeopardy or forever being lost.”  
10 Defendants reason that they will be required to rely upon privileged documents in this case and  
11 “should not be compelled to waive any claims of privilege just because such privileged documents  
12 support Defendants’ defenses in the litigation.” During oral argument counsel for plaintiff  
13 disputed that the parties would likely be required to rely on a number of privileged documents to  
14 assert their claims and defenses.

15 Defendants acknowledge that this case is in federal court on federal question jurisdiction,  
16 and therefore federal law of privilege applies. However, they argue applicable law permits the  
17 court to look to state privilege law. In this case, defendants contend the court should primarily  
18 look to federal common law, but may also rely on state law, particularly in Nevada and California.  
19 Nevada Revised Statute (“NRS”) § 49.095 is Nevada’s attorney-client privilege statute. There are  
20 exceptions to the privilege codified at NRS 49.115, but defendants concede no statutory exception  
21 applies to the facts in this case. Defendants reason that intentional disclosure of privileged  
22 materials should not constitute a waiver because an attorney is not permitted to waive the attorney-  
23 client privilege on behalf of the client. Rather, the privilege belongs to the corporation because  
24 the corporation is the client. In this case, the defendants are the holders of the attorney-client  
25 privilege and may need to rely upon privileged materials in their defense of plaintiff’s claims.  
26 Defendants maintain that they should not be placed in the position of having to choose between  
27 presentation of their best defense and preserving a privilege. They should be able to do both, to  
28 set forth their best case while preserving their privilege.

1           Having reviewed and considered the moving and responsive papers and the arguments of  
2 counsel, the court will enter a protective order in the form below resolving the parties' disputes.  
3 This protective order is entered to facilitate the parties' discovery exchanges. In entering this  
4 protective order, the parties have not shown, and this court has not found, that any specific  
5 documents are entitled to confidential treatment in this case. The parties have not provided specific  
6 facts supported by affidavits or concrete examples to establish that a protective order is required  
7 to protect any specific trade secret or other confidential information under Rule 26(c) of the Federal  
8 Rules of Civil Procedure or that disclosure would cause an identifiable and significant harm.  
9 Additionally, entry of this protective order does not constitute a finding of good cause, in and of  
10 itself, for filing documents produced in discovery under seal in motions or applications filed with  
11 the court.

12           The Ninth Circuit has held that parties seeking to maintain the confidentiality of documents  
13 attached to most non-dispositive motions must show good cause exists to overcome the  
14 presumption of public access. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.  
15 2006); *but see Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016) (standards  
16 courts apply to sealing requests turn on the relevance of the documents to the substantive merits  
17 of a case—not the relief sought). Parties seeking to maintain the secrecy of documents attached  
18 to dispositive motions must show compelling reasons sufficient to overcome the presumption of  
19 public access. *Id.* If a sealing order is permitted, it must be narrowly tailored. *Press-Enterprise*  
20 *Co. v. Superior Ct. of California*, 464 U.S. 501, 512 (1984). Sealing entire documents is improper  
21 when any confidential information can be redacted while leaving meaningful information available  
22 to the public. *In re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 425 (9th Cir. 2011).

23           To comply with *Kamakana*, the party who *designates* documents as confidential must  
24 submit a memorandum of points and authorities to the court presenting articulable facts that  
25 identify the interests in favor of the documents' continued secrecy and showing that these specific  
26 interests outweigh the public's strong interest in transparency. If an opposing party files a motion  
27 to seal certain documents based on the parties' protective order, the *designating party* is required  
28 to file within 14 days an appropriate memorandum of points and authorities making a

1 particularized showing why the documents should remain under seal or why the designating party  
2 should be allowed to file a redacted version. If the designating party fails to timely comply with  
3 this order, the motion to seal will be denied and the Clerk of the Court will be directed to unseal  
4 the documents to make them available on the public docket.

5 In addition to *Kamakana*, the parties are required to follow the proper CM/ECF procedures  
6 for any requests to seal judicial records. The Local Rules of Practice provide that the electronic  
7 record is the court's official record and require the Clerk of the Court to maintain the official files  
8 in all cases in electronic form. *See* LR IC 1-1. Pursuant to LR IA 10-5, attorneys must file  
9 documents under seal using the court's electronic filing procedures:

10 Unless otherwise permitted by statute, rule, or prior court order, papers filed with  
11 the court under seal must be accompanied by a motion for leave to file those  
12 documents under seal. If papers are filed under seal under prior court order, the  
13 papers must state on the first page, directly under the case number: "FILED  
UNDER SEAL UNDER COURT ORDER (ECF No. ). All papers filed under seal  
will remain sealed until the court either denies the motion to seal or enters an order  
unsealing them.

14 *See* LR IA 10-5(a).

15 Turning to the parties' dispute concerning privilege waiver for intentionally produced  
16 documents, the court notes the parties' stipulated Discovery Plan and Scheduling Order (ECF No.  
17 48) stipulated to provisions governing claims of privilege and attorney work product. In it, the  
18 parties stipulated that a party unintentionally producing a document protected from disclosure by  
19 the attorney-client privilege, attorney work-product doctrine, or other recognized privilege would  
20 amend its discovery response and notify the other party that a document was inadvertently  
21 produced and should have been withheld within 15 days of discovering its inadvertent disclosure.  
22 The parties also stipulated that within 72 hours of receiving notice of an inadvertent production,  
23 the requesting party must promptly return the documents and any copies, preserving its right to  
24 challenge the assertion of privilege with the court. Defendants' proposed form of protective order  
25 would alter the terms of the prior stipulation. Having previously stipulated to these provisions, the  
26 court will enforce the parties' stipulation and order regarding inadvertently produced documents  
27 and the timeframe for notifying opposing counsel that a privileged document was inadvertently  
28 produced as well as the timeframe for returning inadvertently produced documents.

1 With respect to defendants' request that the court enter an order providing that the  
2 intentional production of privileged documents shall not constitute a waiver, the court categorically  
3 rejects defendants' non-waiver arguments. As the Advisory Committee Notes to Rule 502(a) make  
4 clear, "[t]his subdivision does not alter the substantive law regarding when a party's strategic use  
5 in litigation of otherwise privileged information obliges that party to waive privilege regarding  
6 other information on the same subject matter, so that the information being used can be fairly  
7 considered in context." *See*, Addendum to Advisory Committee Notes, Statement of  
8 Congressional Intent Regarding Rule 502 of the Federal Rules of Evidence.

9 A party may not intentionally put privilege or protected information into litigation in a  
10 selective, misleading, or unfair manner. Advisory Committee Notes to Rule 502(a) revised,  
11 11/28/07. Fed. R. Evid. 502(b) was enacted to overcome the holdings of some courts that  
12 inadvertent disclosure of protected information results in subject matter waiver of all documents  
13 on the same subject matter. *Id.* Rule 502(b) became effective in 2007 and took the middle ground  
14 among conflicting approaches taken by the courts regarding the legal effect of inadvertent  
15 disclosure of protected communications or information in federal proceedings. *Id.* Rule 502(b)  
16 now provides that inadvertent production of privileged or protected materials does not constitute  
17 a waiver if the holder of the privilege or qualified protection took reasonable steps to prevent  
18 disclosure and also took reasonable steps to rectify the error. *Id.*

19 Rule 502(d) was enacted to address the rising costs of pre-production privilege review,  
20 especially in complex cases involving large amounts of electronically stored information. *Id.*  
21 502(d) was designed to enable a court to enter an order "that will allow the parties to conduct and  
22 respond to discovery expeditiously, without the need for exhaustive pre-production privilege  
23 reviews, while still preserving each party's right to assert the privilege to preclude use in litigation  
24 of information disclosed in such discovery." *See* Addendum to Advisory Committee Notes,  
25 Statement of Congressional Intent Regarding Rule 502 of the Federal Rules of Evidence. The  
26 Rule "does not alter the law regarding waiver of privilege resulting from having acquiesced in the  
27 use of otherwise privileged information. ... and "does not provide a basis for the court to enable  
28 the parties to agree to a selective waiver of the privilege..." *Id.*

1 Rule 502(e) enables the parties to agree among themselves concerning the effect of  
2 disclosures between each other in a federal proceeding. However, the parties' agreement regarding  
3 their own disclosures is not binding on non-parties unless it is incorporated in a court order. ("This  
4 subdivision does not confer any authority on a court to enter any order regarding the effect of  
5 disclosures. That authority must be found in subdivision (d), or elsewhere.") *Id.*

6 In short, Fed. R. Evid. 502 does not authorize the relief defendants request in its proposed  
7 form of protective order.

8 Controlling Ninth Circuit case law also does not support the relief defendants request. The  
9 attorney-client privilege is one of the oldest of the common law privileges. *Upjohn v. United*  
10 *States*, 449 U.S. 383 (1981). Its purpose is "to encourage full and frank communication between  
11 attorneys and their clients and thereby promote broader public interest in the observance of law  
12 and administration of justice." *Id.* The Ninth Circuit has adopted Dean Whitmore's articulation  
13 of the essential elements of the attorney-client privilege:

- 14 (1) Where legal advice of any kind is sought,
- 15 (2) from a professional legal advisor in his capacity as such,
- 16 (3) the communications relating to that purpose,
- 17 (4) made in confidence
- 18 (5) by the client,
- 19 (6) are at this instance permanently protected
- 20 (7) from disclosure by himself or by the legal advisor,
- 21 (8) unless the protection is waived.

22 *In re: Fishel*, 557 F.2d 209 (9th Cir. 1997).

23 The burden is on the party asserting the privilege to establish all of the elements of the  
24 privilege. *United States v. Martin*, 378 F.3d 988, 999-1000 (9th Cir. 2000). "Because it impedes  
25 full and free discovery of the truth, the attorney-client privilege is strictly construed." *Weil v.*  
26 *Investment/Indicators, Research and Management, Inc.*, 647 F.2d 18, 24 (9th Cir. 1980). One of  
27 the elements the party claiming the privilege must prove is that it has not waived the privilege.  
28

1 This case is governed by federal common law principles. The Ninth Circuit has plainly  
2 held that a party may not selectively waive the attorney-client privilege. It has held that voluntary  
3 disclosure to one waives the attorney-client privilege as to the world at large. *In re: Pacific Picture*  
4 *Corp.*, 679 F.3d 1121, 1127 (9th Cir. 2012). There, the Ninth Circuit declined to adopt the selective  
5 waiver theory finding that, if it was “to unmoor a privilege from its underlying justification” it  
6 would be failing to construe the privilege narrowly.” *Id.* at 1128.

7 The work product doctrine is a “qualified privilege” that protects “certain materials  
8 prepared by an attorney acting for his client in anticipation of litigation.” *United States v. Nobles*,  
9 422 U.S. 225, 237-38 (1975) (internal quotation marks omitted) (“At its core the work-product  
10 doctrine shelters the mental processes of the attorney, providing a privileged area within which he  
11 can analyze and prepare his client’s case.”). The work product doctrine is codified in Fed. R. Civ.  
12 P. 26(b)(3) and protects “from discovery documents and tangible things prepared by a party or his  
13 representative in anticipation of litigation.” *In re: Grand Jury Subpoena*, 357 F.3d 900, 906, citing  
14 *Admiral Insurance Co. v. United States District Court*, 881 F.2d 1486, 1494 (9th Cir. 1989). An  
15 adverse party may obtain documents protected by the work product privilege only upon a showing  
16 of substantial need and undue hardship in obtaining the substantial equivalent of the materials by  
17 other means. Fed. R. Civ. P. 26(b)(3). The qualified work product privilege is waived by voluntary  
18 disclosure.

19 The court enters the following protective order governing confidentiality of documents  
20 disclosed in discovery using the parties’ agreed upon terms, and resolving the parties’ disputes as  
21 set forth above.

## 22 **PROTECTIVE ORDER**

### 23 **I. DEFINITIONS**

24 The following definitions shall apply to this Protective Order:

- 25 A. The “Action” shall refer to in the instant litigation originally filed in the United States  
26 District Court for the District of Columbia, and transferred to the United States District  
27 Court for the District of Nevada, Case No. 2:17-cv-01788-JAD-PAL, and any appeal  
28



thereof through final determination. The “Action” does not refer to any “related case” unless ordered by this Court.

B. “Producing Party” shall mean any person or entity producing documents, information or other materials in the Action, including any Party to the Action, or any third parties.

C. “Party” or “Parties” shall mean the Plaintiff and Defendants in this Action, and any other person that may become a named Party to the Action.

D. “Confidential” information or items means information, regardless of how generated, stored, or maintained, or tangible things that qualify for protection under Fed. R. Civ. P. 26(c).

E. “Legend” as used herein shall mean a stamp or similar insignia stating “CONFIDENTIAL”.

F. When reference is made in this Protective Order to any document or Party, the singular shall include the plural, and plural shall include the singular.

## **II. DESIGNATION OF INFORMATION AND DOCUMENTS**

A. When any document or thing produced under this Protective Order is designated as “CONFIDENTIAL” a Legend shall be affixed to the first page and all pages containing information for which the Producing Party seeks protection. When information produced in answer to an Interrogatory, or response to a Request for Production or Request for Admission is designated as CONFIDENTIAL, the response or answer shall be preceded with the appropriate designation.

B. A Producing Party may designate documents, information or material as “CONFIDENTIAL” only upon a good faith belief that the documents, information, or material contains material that is Confidential as defined in Section I., D. above.

C. The initial failure to designate information or documents as CONFIDENTIAL in accordance with this Protective Order shall not preclude the Producing Party from, at a later date, designating any information or documents as CONFIDENTIAL. The Producing Party may, by written notice to counsel of record for the receiving Party, designate previously produced information or documents as CONFIDENTIAL, which

1 it had inadvertently failed to designate. Upon receipt of such notice, the receiving Party  
2 shall promptly mark its copies of the information or documents so designated, and shall,  
3 thereafter, treat the information and documents as if it has been designated  
4 CONFIDENTIAL and shall restrict the disclosure or use of the information or  
5 documents in accordance with this Protective Order. If the information or documents  
6 have previously been disclosed to non-parties, the Parties shall take reasonable steps to  
7 obtain all such previously disclosed information or documents and advise the non-  
8 parties to treat the designated materials in a manner that is consistent with this  
9 Protective Order and as though the information and documents were originally so  
10 designated.

### 11 **III. LIMITATIONS**

- 12 A. This Protective Order shall govern documents, testimony, information and materials  
13 generated or produced in response to any method of discovery conducted by any Party  
14 to the Action, and used in the prosecution and defense of the Action.
- 15 B. Persons obtaining access to CONFIDENTIAL information under this Protective Order  
16 shall use the information only for the preparation of and the trial in the Action. Persons  
17 shall not use such information for any other purpose, including business, commercial,  
18 personal, administrative or judicial proceedings.
- 19 C. Nothing in this Protective Order shall restrict in any way the use or disclosure by a  
20 Party of information (a) that is or has become publicly known through no fault of the  
21 receiving Party; (b) that is lawfully acquired by or known to the receiving Party  
22 independent of the Producing Party; or (c) prior to entry of this Protective Order was  
23 previously produced, disclosed, and/or provided by the Producing Party or a non-party  
24 without an obligation of confidentiality and not by inadvertence or mistake.

### 25 **IV. PERMISSIBLE DISCLOSURES/ACCESS**

26 Except as set forth herein, Confidential information, and any facts or information contained  
27 therein or derived therefrom, shall be disclosed only to the Court and/or to: (a) the Parties in the  
28 Action, including their officers, directors and employees, but only to the extent that such disclosure

1 is necessary for the conduct of litigation in the Action; (b) Outside Counsel for the Parties hereto  
2 and their agents, employees, paralegals, or other secretarial and clerical employees; (c) experts,  
3 independent contractors, consultants, or advisors who are employed or retained by, or on behalf  
4 of, one or more of the Parties to the Action or their Outside Counsel to assist in preparation of the  
5 Action for trial; (d) deponents and their counsel who have a need to review this material during  
6 the course of, or in connection with, depositions taken in or for the Action; (e) stenographic  
7 reporters who are involved in depositions, the trial or any hearings or proceedings before the Court  
8 in the Action; (f) people who have previously received or created the document; and (g) witnesses  
9 in the Action who need to review this material in connection with their testimony in the Action.  
10 Confidential information may be disclosed to persons listed in this paragraph only after such  
11 person has been shown a copy of this Protective Order and agrees to be bound by the terms of this  
12 Protective Order in the form attached hereto as **Exhibit A**.

13 **V. DECLASSIFICATION**

14 Unless otherwise ordered by the Court, or otherwise agreed by the Parties, all documents  
15 and other discovery materials designated “CONFIDENTIAL” in accordance with Section I., D  
16 above, shall be treated as such under this Protective Order. In the event that any Party objects to  
17 the designation of any document, the objecting Party may seek modification of the designation or  
18 the disclosure of the redacted information in accordance with the following procedure:

19 At any time, the receiving Party of any document or information designated  
20 CONFIDENTIAL may notify the Producing Party, in writing, that the receiving Party does not  
21 concur in the designation or redaction. The Parties shall attempt to resolve such challenges  
22 informally. In the event that such attempts are unable to resolve their disputes in the meet-and-  
23 confer process, either party may file an appropriate motion with the court challenging or defending  
24 the designation of the document as CONFIDENTIAL. The burden is on the party designating the  
25 document as CONFIDENTIAL to support its claim of confidentiality. The parties shall treat the  
26 documents as CONFIDENTIAL until the Court rules otherwise.

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1           **VI.     DESIGNATED INFORMATION AND DOCUMENTS IN DEPOSITIONS**

2           A. In the case where Confidential information or documents are used or revealed during a  
3           deposition or if a deponent is asked about or shown documents that have been  
4           designated as CONFIDENTIAL, under this Protective Order, designation of the  
5           transcript or any portion thereof, including the designated documents or other exhibits,  
6           as “CONFIDENTIAL” may be made by a statement by a Party, counsel or the witness  
7           on the record either during or after conclusion of the deposition. The stenographer  
8           transcribing the deposition shall be instructed to affix a Legend to the cover page and  
9           all appropriate pages of the transcript, “This transcript portion contains information  
10          subject to a Protective Order and shall be used only in accordance therewith.”

11          B. A Party or a witness may designate a deposition or trial transcript, or a portion thereof,  
12          disclosing, containing or referring to any Confidential information or documents as  
13          “CONFIDENTIAL” by informing counsel for all other Parties to this Action in writing  
14          within thirty (30) days after receipt of the transcript as to the specific pages and lines  
15          deemed Confidential, and thereafter such pages and lines shall constitute Confidential  
16          information or documents pursuant to this Protective Order. Upon receipt of such  
17          notice, any Party in possession of copies of the transcript with the designated pages and  
18          lines shall affix the appropriate Legend thereto. During the 30-day interval following  
19          receipt of a transcript, the transcript shall be treated as Confidential.

20           **VII.    DESIGNATED INFORMATION AND DOCUMENTS IN BRIEFS**

21           In the event that any Confidential document or information, or information derived  
22          therefrom is included with, or the contents thereof are disclosed in any documents filed with the  
23          Clerk of this Court or any other court, including, without limitation, any pleadings, motion papers,  
24          briefs or deposition transcripts, such documents shall be filed under seal subject to the provisions  
25          of LR IA 10-5 until further order of the Court. The filing party shall be responsible for informing  
26          the Clerk of the Court that the filing should be sealed and for placing the legend, pursuant to LR  
27          IA 10-5, “FILED UNDER SEAL PURSUANT TO THE PROTECTIVE ORDER DATED \_\_\_\_”  
28          above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform

1 to the labeling requirements set forth in this Protective Order. The Party who has designated such  
2 materials as Confidential information shall, within 14 days after the filing of the document under  
3 seal, submit a motion to the Court making the showing required under *Kamakana v. City and*  
4 *County of Honolulu*, 447 F.3d 172 (9th Cir. 2006) and *Center for Auto Safety v. Chrysler Group,*  
5 *LLC*, 809 F.3d 1092 (9th Cir. 2016) to sustain the sealed status of such materials. When filings  
6 are made under seal, the parties agree to file through the Court's Electronic Case Filing Procedures  
7 redacted versions of such filings with any Protected Material removed. In complying with this  
8 requirement, the parties shall exercise good faith in redacting Confidential information of other  
9 parties.

#### 10 **VIII. DESIGNATED INFORMATION AND DOCUMENTS IN THE RECORD OF** 11 **THE ACTION**

12 Confidential information or documents may be offered in evidence at any hearing or the  
13 trial in the Action, provided that the Parties have met, conferred and agreed in advance of the  
14 hearing and/or trial as to how the information or documents will be used, including, by way of  
15 example, requesting that the Court designate that portion of the transcript containing the Parties'  
16 discussion of the Confidential information or documents as Confidential and maintain it under  
17 seal, only to be produced to the Parties at their request. If the Parties cannot agree about how the  
18 information or documents will be used during a hearing, before or at the time of the hearing, the  
19 Party designating such Confidential status may move the Court for an order that the evidence be  
20 received *in camera* or under other conditions to prevent unnecessary disclosure. If such a motion  
21 is made regarding evidence to be introduced at the time of trial, then the Party designating such  
22 Confidential status shall notify opposing counsel and the Court of its intent to make the motion  
23 sufficiently in advance of and outside the presence of the jury so that counsel has the opportunity  
24 to object to the evidence and/or an opportunity to seek appropriate protection from the Court  
25 outside the presence of the jury and before the information or documents are offered into evidence  
26 in open court. The Court will then determine whether the proffered evidence should continue to  
27 be treated as Confidential and, if so, what protection, if any, may be afforded to such information  
28 at the hearing.

1           **IX.     SUBPOENA BY COURT OR OTHER AGENCIES**

2           If at any time any document or information protected by this Protective Order is  
3 subpoenaed by any court, administrative or legislative body, or is requested by any other person  
4 or entity purporting to have authority to require the production of such information, the Party to  
5 whom the subpoena or other request is directed shall immediately give written notice to any Party  
6 which has designated such information Confidential. The Party that received the subpoena shall  
7 object to production under Rule 45 of the Federal Rules of Civil Procedure, or any similar rule  
8 protecting the production of Confidential documents in that proceeding. After receipt of the notice  
9 specified under this paragraph, the designating Party shall be responsible for obtaining any order  
10 it believes necessary to prevent disclosure of documents designated, and the Party to whom the  
11 referenced subpoena or other request is directed shall produce such document or information only  
12 upon an order issued by a judge of a court of competent jurisdiction requiring such production.

13           **X.     CLIENT CONSULTATION**

14           Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering  
15 advice to their clients and, in the course thereof, relying generally on examination of stamped  
16 Confidential information or documents; provided, however, that in rendering such advice and  
17 otherwise communicating with such clients, counsel shall not make specific disclosure of any  
18 items so designated except pursuant to the procedures in Paragraph IV above.

19           **XI.    COPIES OF DESIGNATED INFORMATION**

20           Outside Counsel are responsible for employing reasonable measures, consistent with this  
21 Protective Order, to control duplication of, access to, and distribution of copies of Confidential  
22 information. Parties shall not duplicate Confidential information or documents except working  
23 copies and for filing in Court under seal. All copies of any Confidential information or documents  
24 shall be treated as provided in this Protective Order. Any Party making, or causing to be made,  
25 copies of any such documents shall make certain that each such copy bears the appropriate Legend  
26 pursuant to the requirements of this Protective Order.

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28

1                   **XII. ADDITIONAL RESTRICTIONS FOR CONFIDENTIAL INFORMATION**  
2                   **DESIGNATED “CONFIDENTIAL”**

3                   A. If a Producing Party wishes to waive or otherwise reduce the restrictions set forth on  
4                   the production of Confidential information designated “CONFIDENTIAL,” it may do  
5                   so by agreement in writing with the Receiving Party.

6                   B. A Receiving Party may include excerpts of the Confidential Information designated  
7                   “CONFIDENTIAL” in a pleading, exhibit, expert report, discovery document,  
8                   deposition transcript, or other Court document (hereinafter “Court Document” or  
9                   “Court Documents”), provided that the Court Documents are appropriately marked  
10                  under this Protective Order, restricted to those who are entitled to have access to them  
11                  as specified herein, and, if filed with the Court, filed under seal in accordance with the  
12                  Court’s rules, procedures and orders.

13                 C. The Receiving Party may only include excerpts of Confidential information designated  
14                 “CONFIDENTIAL” that are reasonably necessary for the purposes for which such part  
15                 of the Confidential information is used in any Court Documents. To the extent portions  
16                 of the Confidential information designated “CONFIDENTIAL” are quoted in a Court  
17                 Document, either: (1) the entire Court Document will be stamped and treated as  
18                 “CONFIDENTIAL” or (2) those pages containing quoted Confidential information  
19                 will be separately stamped and treated as “CONFIDENTIAL”.

20                   **XIII. NO WAIVER**

21                  The terms and provisions of this Protective Order shall not be deemed or interpreted to  
22                  require the disclosure or production by any party hereto of any documents or information otherwise  
23                  subject to a valid claim of attorney-client, work product, or other privilege or protection against  
24                  disclosure in discovery.

25                  No Confidential information or documents shall lose such status under this Protective  
26                  Order as the result of the use of such information or documents in any hearing, trial, or other court  
27                  proceeding in this Action, provided that such use is consistent with the terms of this Protective  
28                  Order. Counsel to the Parties in the Action shall confer at least five (5) days before any such  
                      hearing, trial, or other court proceeding in order to work out any objections to the use of any

1 Confidential information or documents in such court proceeding and to make such amendments to  
2 this Protective Order which the Parties agree are necessary to assure the continued confidentiality  
3 of such information.

4 Notwithstanding anything to the contrary contained herein, all objections as to  
5 admissibility in evidence of the discovery material subject to this Protective Order are reserved  
6 and are not waived by any terms of this Protective Order. The use of Confidential information and  
7 documents as evidence at trial shall be subject to this Protective Order unless otherwise agreed to  
8 by the Parties or modified by the Court.

9 The inadvertent disclosure of Confidential information and documents shall not, under any  
10 circumstances, be deemed a waiver, in whole or in part, of any Party's claims of confidentiality.

11 The inadvertent production of any document or other information during discovery in the  
12 Action shall be without prejudice to any claim that such material is privileged, prohibited or  
13 protected from disclosure as privileged or work product, and no Party shall be held to have waived  
14 any rights by reason of such inadvertent production.

#### 15 **XIV. INADVERTENT PRODUCTION OF PRIVILEGED MATERIALS**

16 A. Inadvertent production of privileged material shall be dealt with in accordance with  
17 this court's prior order entered August 24, 2017 (ECF No. 48) and Fed. R. Civ. P.  
18 26(b)(5). The inadvertent production of information that is subject to a claim of any  
19 privilege or other protection as trial preparation material shall not constitute a waiver  
20 of any privilege or protection, provided that — consistent with the provisions of Fed.  
21 R. Civ. P. 26(b)(5) — the Producing Party notifies the receiving Party in writing within  
22 15 days of the Producing Party's discovery of the inadvertent production.

23 B. Following the Producing Party's written notice of the inadvertent production, the  
24 receiving Party shall promptly return, destroy, or delete from its databases all copies of  
25 the specified information within 72 hours, and may not rely upon or make use of the  
26 inadvertently produced materials and shall make reasonable efforts to retrieve the  
27 information if the receiving Party previously provided the information to third parties.  
28



1 C. The receiving Party shall not assert a claim or argument in this or any other court or  
2 legal proceeding that the Producing Party's act of inadvertently producing the  
3 information constituted a waiver of the Producing Party's privilege or other protection  
4 over the information.

5 D. Until the Court makes a determination of the privileged or protected status of the  
6 information, the receiving Party shall not use in any way (including, but not limited to,  
7 using the information in depositions or at trial) nor disclose the information to other  
8 Parties.

9 **XV. NON-TERMINATION**

10 A. The termination of proceedings in the Action shall not relieve the Parties from the  
11 obligation of maintaining the confidentiality of all information and documents  
12 produced and designated pursuant to this Protective Order, unless the Parties otherwise  
13 agree or the Court orders or permits otherwise. Upon the final disposition of the Action,  
14 all information and documents, including any summaries or abstracts of materials,  
15 however maintained, shall be kept completely confidential. Outside Counsel for either  
16 Party may use the Confidential information and documents only for the purpose of  
17 defending ethical charges or professional malpractice charges, and may not use  
18 Confidential information or documents in any subsequent lawsuit.


19 B. Within thirty (30) days of the final conclusion of this litigation, including appeals, if  
20 requested in writing by the party designating the documents as Confidential  
21 Documents, the party seeking disclosure shall return all Confidential Documents, and  
22 any copies, abstracts or summaries thereof, to the disclosing party's attorney of record,  
23 or certify in writing to the disclosing party's attorney, that they have been destroyed.

24 C. This Court shall have jurisdiction over the parties hereto with respect to any dispute  
25 concerning the enforcement or interpretation of this Protective Order and the use of this  
26 Protective Order.

27 Having reviewed and considered the moving and responsive papers and for the reasons  
28 explained,

1           **IT IS ORDERED** that plaintiff's Motion for Protective Order (ECF No. 57) and  
2 defendants' Countermotion for Protective Order (ECF No. 63) are **GRANTED in part** and  
3 **DENIED in part** consistent with the provisions of this order.

4           DATED this 24th day of January, 2018.

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7 PEGGY A. LEEN  
8 UNITED STATES MAGISTRATE JUDGE  
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I hereby state that I have read and received a copy of the Protective Order Governing the Confidentiality of Information and Documents (the “Order”) in *Steven Ringelberg v. Vanguard Integrity Professionals – Nevada, Inc., Vanguard Integrity Professionals, Inc.*, Case No. 2:17-cv-1788-JAD-PAL, pending in the United States District Court, District of Nevada (the “Court”). I understand the terms of the Order, agree to be bound by those terms, and consent to the jurisdiction of the Court with respect to enforcement of the Order.